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1924
SEVEN VETOES,

-BY-

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THOMAS MOONLIGHT,

GOVERNOR

WYOMING TERRITORY.

TENTH LEGISLATIVE ASSEMBLY.

1888.

CHEYENNE, WYO.:

BRISTOL & KNABE PRINTING CO., PRINTERS AND BOOKBINDERS.

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EXECUTIVE DEPARTMENT, }
CHEYENNE, WYO., Feb. 14. }

To the Honorable House of Representatives, Tenth Legislative Assembly:

GENTLEMEN--With this I return, without my approval, House Enrolled Act No 7, being "An act to amend section 2935 of the revised statutes of Wyoming."

I cannot give my consent to the proposed enactment, because in my best judgment it would be an interjection of a proposition into the body of the law which has heretofore been uniformly decided by the courts of equity.

According to the clear meaning of the statute as thus sought to be amended, it would be the duty of the courts to appoint receivers for corporations in all cases when the application therefor exhibited these two elements, and none other.

First, the existence of a demand against a corporation.

Second, the insolvency of a corporation or its imminent danger of insolvency.

It ought to be a sufficient objection to the proposed amendment, that the uniform ruling of all the courts, and so far as my reading extends, the views of all text writers upon the subject of receivers, has been in positive denial of the sufficiency of these elements alone.

Mr High, in his work on receivers, at section 11 of the first edition, uses this language: "And to warrant the interposition of a court of equity, by the aid of a receiver, it is essential that the plaintiff should show: First—either a clear, legal right in himself to the property in controversy, or that he has some lien upon it, or that it constitutes a special fund out of which he is entitled to satisfaction of his demand; and,

Secondly—it must appear that possession of the property was obtained by the defendant through fraud; or that the property itself, or the income of it, is in danger of loss from the neglect, waste, misconduct, or insolvency of the defendant. Not only must the plaintiff show a case of adverse and conflicting claims to the property, but he must show some emergency or danger of loss demanding immediate action, and that his own right is reasonably clear and free from doubt."

Again, at section 18 of the same edition he uses this language:

"While insolvency of a defendant in possession, and against whom a receiver is sought, is frequently relied upon by the courts as a ground for granting the relief it is to be observed that insolvency will not of itself warrant a court in appointing a receiver. It must appear the plaintiff has a

probable cause of action against the defendant, and that the benefit to result from his recovery will either be wholly lost or substantially impaired by reason of the insolvency, unless a receiver be appointed "

Mr Pomeroy, in his celebrated work on "Equity Jurisprudence," at sections 1332 to 1335, treats of this question, and in note 1, page 363, volume 3, uses this language: "The case must undoubtedly be very special to warrant the appointment of a receiver in a suit by a simple creditor "

I do not believe it to be sound policy to place corporations doing business in this Territory in the dangerous position that any creditor can close up its business, take its property out of its possession, simply because it is in imminent danger of insolvency, or because it is insolvent. There should be, as stated by Mr. High, some other grave and serious reasons for doing this in addition to the insolvency or imminent danger of insolvency. Another fact which has very great weight with me in the conclusion at which I have arrived concerning this measure, is this: at the last session of the legislative assembly the present code of civil procedure was adopted. It was prepared by a commission of able lawyers and presented to the assembly. This commission gave great care to the selection of a code, and after carefully examining all the codes of the code States, selected the Ohio code as the one showing the most skillful structure, and recommended its adoption, making just as few changes as possible. In adopting the Ohio code, which I may here state is substantially the code in force in Nebraska and Kansas, we took it with a well-settled, fixed, judicial construction, reached in those States only after many years of litigation. If we should now attempt to make radical changes in the code as adopted, it must inevitably result in litigation before the true construction of those portions changed would or could be settled.

Inasmuch as the code, as it now exists, has worked well and proved adequate to carry on the large amount of and varied litigation which has arisen in the three populous States mentioned, it would, in my opinion, be the part of wisdom for us to let it remain as it is, at least, until our experience with its workings has been sufficiently extended to demonstrate beyond a doubt its insufficiency.

I am, very respectfully,

THOMAS MOONLIGHT,

Governor.

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EXECUTIVE DEPARTMENT, }
CHEYENNE, WYO, February 14, 1888 }

To the Honorable Council, Tenth Legislative Assembly:

GENTLEMEN—A sense of duty compels me to return to the Council in which it originated Council Enrolled Act No. 6, without my approval

The objections to the proposed measure are as follows:

First —The bill in terms authorizes the issue of preferred stock, not only by corporations to be hereafter organized, but also by existing corporations. In my opinion, so far as it is attempted to authorize existing corporations to issue preferred stock, the bill is a violation of that fundamental provision of law which declares that no law shall be enacted which impairs the obligation of a contract

To my mind, nothing can be clearer than that when a corporation is organized, a contract is entered into between the various subscribers to the capital stock of the corporation; and it is equally clear that the statute in force at the time of the creation of a corporation is included in and a part of such contract.

With respect to all corporations which have heretofore been organized under the laws of this Territory, it has been the undoubted and indisputable right of each shareholder to share rateably in the distribution of the profits made by the corporation, and this right the respective shareholders of such corporation could in proper cases enforce in the courts.

In section 572 of Taylor's "Law of Private Corporations," I find an extended citation from the opinion of the New York Court of Appeals, delivered by Judge Folger, and in which the author states to be a leading case on the power of a corporation to issue preferred shares, to-wit: The case of Kent vs. Quicksilver Mining Company, reported in 78 N. Y., 159 to 179. I may well base my opinion and rest the case upon the clearly expressed opinion of so eminent a jurist and pure public servant as Judge Folger. I quote from the opinion as fully expressing my views, and respectfully call the attention of the Council to the case:

"Shares of stock are in the nature of *choses in action*, and give the holder a fixed right in the division of the profits or earnings of a company so long as it exists, and of its effects when it is dissolved. That right is as inviolable as is any in property, and can no more be taken away or lessened against the will of the owner than can any other right, unless power is reserved in the first instance, when it enters into the constitution of the right, or is properly derived afterwards from a superior law-giver. The certificate of stock is the muniment of the shareholder's title and evidence of his right. It expresses the contract between the corporation and his co stockholders and himself; and that contract cannot, he being unwilling, be taken

away from him or changed as to him without his prior dereliction, or under the conditions above stated. Now it is manifest, that any action of a corporation which takes hold of the shares of its capital stock already sold and in the hands of lawful owners, and divides them into two classes, one of which is thereby given prior right to a receipt of a fixed sum from the earnings before the other may have any receipt therefrom, and is given an equal share afterwards with the other in what earnings remain, destroys the equality of the shares, takes away a right which originally existed in it, and materially varies the effect of the certificate of stock. It is said, that when a corporation can lawfully buy property, or get money on loan, any known assurance may be exacted and given which does not fall within the prohibition, expressed or implied, of some statute; and that is sought to be applied here. But the prohibition to such action as this is found, not included in a statute, commonly so called, but in the constitutional provision which forbids the impairment of vested rights save for public purposes, and on due compensation. The right which a stockholder gets on the purchase of his share, and the issue to him of the certificate therefor, is such a vested right."

I would further cite the Council to Cooley on Constitutional Legislation, fifth edition, pages 337 and 346; also to Morawetz on Private Corporations, vol. 1, second edition, pages 464 and 465. After speaking on the subject of issuing preferred shares by the consent of all the shareholders, and providing for such issue at the organization of a corporation, the author pointedly says:

"It has been held that authority to issue preferred shares may be conferred by an act of the legislature amending the charter of the corporation. But this doctrine appears to be untenable. If the directors of a corporation, or the majority of shareholders, have no right to issue preferred shares, because this would be in violation of the contract rights of the individual shareholders, the legislature would have no constitutional power to authorize the issue of such shares against the will of any shareholder."

In nearly every case where an opinion has been given that the legislature may confer the right to a corporation to issue preferred stock, when no such right originally existed, it has been in cases of public corporations such as railroads, bridge companies, etc., which are distinct from private corporations in the sense that the public generally are in no wise interested or affected. See vol. 2, second edition of Morawetz, pages 1046 and 1060, 1066, 1097 and 1098. On page 1066 the author says: "Legislative powers extend over all matters of public interest, but where the public are not interested private rights cannot be interfered with."

Pages 1097 and 1098—"But it was not intended by any reservation in a charter or a general law to withdraw the legislature of a State from its properly legislative duties and make it the arbiter over private rights. It is not the purpose of a provision of this nature to give the legislature of a

State fatherly control over the affairs of private corporations. The right is reserved for the benefit of the public and can be exercised only *for public purposes.*" Also see American Law Register, new series, vol. xx, Jan.-Dec. 1881. In closing this point of objection it is proper to say that by changing the proposed measure so as to provide that in relation to corporations already existing, preferred shares may be issued only with the unanimous consent of the entire body of the stockholders representing the entire capital stock of the corporation, this objection could be overcome.

'Second—The proposed measure further provides that the preferred shares shall be either cumulative or non-cumulative, as the shareholders, three-fourths in number, representing three-fourths of the entire capital stock, may elect.

Under this provision the door is opened wide for the gravest wrongs upon the holders of common stock, and it would be a very easy matter for a board of directors in sympathy with the holders of preferred shares (and such boards are the rule, as experience has clearly taught us) to so manipulate the affairs of a corporation as to make the shares of common stock absolutely and wholly valueless. Let me illustrate: Suppose preferred stock is issued with the provision contained in the bill under consideration, paying 7 per centum annual dividends, and securing to the preferred shareholders the payment of this 7 per centum upon such preferred shares, before any dividend should be paid upon the common stock. How easy it would be for a board of directors, mindful only of the interests of the preferred shareholders (and perhaps the directors are all preferred shareholders) to declare a dividend for the first year of 2 per cent., the second year 3 per cent., the third year 4 per cent., the fourth year 5 per cent., the fifth year 6 per cent., and the sixth year 7 per cent.; there would then be due for the seventh year of cumulative dividends unpaid in the first five years, 15 per cent. This, added to the 7 per cent. dividends due the seventh year, would make 22 per cent. due at the close of the seventh year, and which must be paid before one fraction of 1 per cent. shall be allowed to go to the common stockholders. This is not an extreme but a very conservative estimate, and the majority of the common stockholders would be "frozen out" long before the preferred shareholders had satisfied themselves with the cumulative dividends this bill would give them. The cumulative provision was, perhaps, originally well intended, but to-day, under the workings of ten years, has been converted into one of the most gigantic engines of fraud and wrongdoing the world has ever seen. It is through just such provisions that the Goulds and Sages have been enabled to ripen and fatten upon the earnings of a confiding people and at the expense of widows and orphans whose few dollars were invested, as they thought safely, in the capital stock of railroads and other corporations throughout the United States. In my opinion the cumulative character of the stock, if allowed at all, should only be for a limited time of, say, three years.

Third The proposed measure further provides that in the event that any corporation organized under the laws of this Territory shall have already agreed and determined at a meeting of its stockholders to issue preferred stock, such action is legalized, and it shall only be necessary for it to file the certificate required by section 1 of the enrolled act.

This provision is either wholly and entirely useless, or else some corporation has assumed to authorize the issuance of such preferred shares in the belief that it would be able to induce the present legislative assembly to validate its act. Now, if any corporation organized under the laws of this Territory has at any time issued or authorized the issue of preferred stock, it has done that which the law did not, and in my opinion, except by the unanimous consent of all the stockholders, authorize or empower it to do. If such be the case it would, in my judgment, be a wise, practical lesson to teach the offending corporation that if it oversteps the limitations of its powers as established by law, it does so at its peril.

In this instance, it would be an exceedingly bad precedent to establish, that a corporation organized under the laws of Wyoming Territory may do an unlawful, unauthorized act, and have that act validated simply by asking the law-making body to do so.

I am, very respectfully,

THOMAS MOONLIGHT,

Governor.

EXECUTIVE DEPARTMENT, }
CHEYENNE, WYO., February 21, 1888. }

To the Honorable House of Representatives, Tenth Legislative Assembly:

GENTLEMEN—I have the honor to return herewith House Enrolled Act No. 9 without my approval.

This is to me a very unpleasant duty, for I had hoped to be able to give the enactment a hearty approval, and thus be able to assist in some degree in allaying the feeling now existing against the present "Maverick law." The bill before me is in many respects a great improvement upon the so-called Maverick law, but it contains much, in my opinion, even more dangerous and far-reaching for evil.

Section One provides that the Governor, during the present session of the Legislature, and at each session thereafter, shall nominate, and by and with the consent of the Council appoint, a Board of Live Stock Commissioners.

Section Three provides that the Live Stock Commissioners shall hold their offices for two years, and until their successors shall have been nominated and confirmed, and shall have qualified.

Section Three is a direct challenge of the appointing power, and an encroachment upon the heretofore recognized rights and prerogatives of the Executive. This section virtually places the Council over the Executive in the matter of appointments, and enables that body to dictate the nominations, after the first set of Commissioners shall have been commissioned. Let us reason together on this point.

The first section empowers the Governor to nominate the Commissioners, and by and with the consent of the Council appoint them; that is, when they shall be confirmed they are to be commissioned. The third section defines their term of office to be two years, and they will be so commissioned. Before the expiration of the two years, and while the next Council is in session, new nominations must be made by the Governor and submitted to the Council, who need not confirm them, and by so doing continue the old Commissioners in power for two more years, although their commissions shall have expired. The next Council, four years hence, can do the same thing, and so on, thus virtually ignoring the appointing power of the Governor, and continuing men in office whose commissions have long expired. This section may be construed as complimentary to the present appointing power, or it may have been an oversight on the part of the Legislature, but in either event, it can never receive my sanction.

After a careful reading of the bill, I find complete and perfect harmony existing concerning this third section, and all the powers, duties and privileges of the Commissioners, for after they are once commissioned they are absolutely free to do as they please. They are beyond the power of removal, for none is provided, they draw no salary, give no bonds, acknowledge no responsibility, and are subject to no authority. They may ride rough-shod over the rights of others, and there is no remedy, save in the courts. They can appoint an unlimited number of subordinates, and pay them out of the Maverick Fund provided by the law, hence there is always an inducement to keep the Maverick Fund "booming," and the inspectors and assistants will not be slow in gathering in mavericks, because that means pay at the end of each month. Another important point: The Commissioners and their numerous employees are, by the third section, offered an inducement to participate in elections, and secure the selection of a Territorial Council every two years, for such Council can keep them all in office two years longer by simply refusing to confirm any new appointments. The Commissioners once appointed and commissioned can snap their fingers in the face of the Governor, can laugh at the House of Representatives, can defy all Territorial officers, but they must render allegiance to the Council.

Section Six organizes the Board of Commissioners by giving the members power to elect a president and vice-president from among their number, and the selection of a secretary from among themselves or from the outside.

The Board of Commissioners may appoint a secretary who is at this moment a member of the Tenth Legislative Assembly, and who has had a voice in creating the office and fixing the salary, although the law of Congress governing the Territories (Clause 28, page 40 of the Revised Statutes of Wyoming) absolutely prohibits this. Who shall bring the Commissioners to judgment should they do this illegal act? They are beyond all authority; they audit and allow their own accounts, certified to by their own secretary, and the Territorial Auditor and Treasurer are required to honor them. The secretary is required to give a bond to the Territory of ten thousand (10,000) dollars, to be approved by the Governor, and filed with the Secretary of the Territory, and has the handling and keeping of tens of thousands of dollars annually. It will not do to claim that he is not an officer within the meaning of the law, else why shall his bond be to the Territory for the faithful discharge of his duties as Secretary? Why shall the Governor of the Territory be required to approve it? Why shall he be allowed and required to draw warrants on the Territorial Auditor and Treasurer, and give and take receipts to these Territorial officers in his official capacity, if he is not an officer as contemplated by the law of Congress?

Section Nineteen empowers the Board of Live Stock Commissioners, and makes it their duty, to appoint such stock inspectors and assistants as they may deem necessary, and to distribute them within and without the Territory for the protection of stock.

Section Twenty is more dangerous and threatening to the lives and liberties of the citizens of Wyoming than all the other sections combined, but is in perfect harmony with the general scope and spirit of the bill. I quote in full:

“Section Twenty. Such inspectors and assistants shall have the power to summon a posse when necessary, to make an arrest in the same manner and by the same authority as sheriffs; such stock inspectors and assistants may when deputized exercise the power of deputy sheriffs, but shall not receive any fees or emoluments therefor from the Territory or county, except as hereinafter provided.”

The first clause of this section clothes the stock inspectors and assistants with the powers of sheriffs, and authorizes them to summon posses and make arrests (and remember there is no limit to the numbers which may be appointed.) The second clause seems to be in conflict with the absolutism of the first, unless it means that the Live Stock Commissioners can deputize some as sheriffs and others as deputy sheriffs, and this is the reasonable interpretation. If the whole section means anything, it is the creation of a conflicting power with the duly elected and appointed officers of the law, and must be a dangerous element in any community. It seems to me, therefore, that the safety of the public requires, in view of the powers given by statute to the sheriffs of each county, that such inspectors and assistants should not be clothed with any such extraordinary powers as are

given to them by this section. In the discharge of their duties they have ample means afforded them by statute to have any offender brought to justice by making the necessary complaint before a justice of the peace, or by appearing before the grand jury and making known their complaint. The Live Stock Commissioners could also apply to the sheriffs of the various counties for the appointment of some of their inspectors and assistants as deputy sheriffs, and when so appointed they would have to give bonds to the sheriffs, who in turn would be held responsible for their official actions. This would give a security and insure a responsibility not to be found in the bill.

Section Twenty-two, after providing for the compensation of stock inspectors and assistants, reads as follows:

"Any inspector, assistant or other employee of the commission, who shall receive any bribe, or who shall receive for the services required of him by this act any compensation or reward, other than such as is provided in this act, shall be immediately discharged."

These inspectors and assistants are clothed with the powers of sheriffs, but if they take any bribe or reward, "they shall be immediately discharged." They may summon their fellow-citizens and drag them out of bed to assist in rounding up a maverick, and may arrest and imprison the citizen, but if in the discharge of the high and exalted duties of a sheriff they should accept of any bribe, the punishment of discharge would immediately follow. To be discharged and paid off in the evening would wipe out the offence of receiving a bribe, and the sleep of one night would purify the discharged culprit and fit him for a renewal of the powers and duties of a sheriff and stock inspector, in full communion and fellowship, in the morning. This stock inspector and sheriff is not only discharged for taking a bribe in his official capacity, but thereby is enabled to flee and escape the toils of the law, instead of being arrested and tried like any other offender.

Section Forty-six of the bill provides that the money for all estrays shall be turned in to the secretary of the Commission, and he is to pay over to the Treasurer of the Territory, on the first day of June in each year, all moneys remaining in his hands belonging to the Estray Fund, which shall have been in his hands for more than one year, after the publication of the notices provided in the section preceding. This section would enable the secretary to have many thousand of dollars, as I am informed, in his possession for almost two years before being required to turn it over to the Territorial Treasurer. For illustration: In the months of July, August and September, in each year, large shipments of cattle take place, and the largest numbers of estrays are then found, or detected, sold, and the money sent to the secretary. When the first of the following June comes round, none of this money would have to be turned over to the Territorial Treasurer, because it had not been in the possession of the secretary "for more than a year"; hence he would keep it for another year, thus having the cus-

today and use of large sums of money for nearly two years. I am reliably informed that this Estray Fund is often many thousands of dollars. To vote to create the office, and then jump into the possession of several thousand dollars within six months thereafter, and loan it out at 15 per cent interest, and convert it to his own use without any law to the contrary, would be making a membership in the Tenth Legislative Assembly worth something. It will be answered that this Estray Fund is liable to be claimed by the owners from time to time, and so there would not be much money on hand. This is true, but the adjudicating of all the estray claims is in the hands of the same secretary, and he would not be likely to pay out a dollar in this way until he was compelled to do so, with the temptation of 15 per cent. always before him for the use of the money.

Section Fifty-two provides that "all fees, salaries, compensation and expenses incurred under the provisions of this Act shall be paid out of the Round-up and Inspection Fund and the Estray Stock Fund, respectively; and no fee, salary, compensation or expense incurred under the provisions of this act shall ever, under any circumstances, be paid out of any fund other than those named in this Act."

This closing section reads very safely for the Territorial Treasury, but I'm afraid it might not prove so. The Live Stock Commissioners are under no bonds, and subject to no penalty, and I cannot see anything to hinder them from employing many men at \$150.00 per month each, and after paying out all the money in the funds referred to, saddling the balance on the Territory. There would be no penalty attached for doing this, and the innocent employees would not be to blame, and could not know whether the money was in the funds under the control of the Commissioners to pay them, or not. They would surely have an equitable claim against the Territory and would be entitled to their pay. The Commissioners are nominated by the Governor, confirmed by the Council, commissioned by the Governor, and are known as the "Board of Live Stock Commissioners of Wyoming." It seems to me that the Territory would be responsible for their official acts, and compelled to pay any indebtedness created by them in the discharge of their duties, and ought to be in some way protected in return.

That legislation is needed to wipe out the present obnoxious "Maverick Law," and afford just and adequate protection to the live stock interests of the Territory, I am fully convinced, and realize that this would be in accord with the public demand; hence would gladly approve a bill looking to these ends, with such changes and limitations as are herein set forth.

I am, very respectfully,

THOMAS MOONLIGHT,

Governor.

EXECUTIVE DEPARTMENT, }
CHEYENNE, WYO., March 2, 1888. }

To the Honorable House of Representatives, Tenth Legislative Assembly:

GENTLEMEN—I have the honor to return herewith House Enrolled Act No. 12 without my approval.

The act provides for the erection, completion, maintenance and care of certain public buildings, and for the support and maintenance of certain public institutions, and for other purposes.

Chapter One relates to the Capitol building, and provides for the appointment of a Building Commission to supersede the one now in existence, June 1, 1888, under certain restrictions and conditions. Concerning the provision for the appointment of Commissioners, I am at a loss to arrive at the true meaning and intent of section 3, which, after designating that the nominations shall be made by the Governor during the present session of the Council, and by and with the advice and consent of that body shall make the appointments, then goes on to say, "In the entire absence of such nominations and appointments by the Governor, the present Capitol Building Commission shall continue as such," etc. If this means that unless the Council shall confirm the nominations invited by section 3, then the old members of the Commission shall hold over for another two years, the same question is here presented which forced itself upon the Executive in the Live Stock Commission bill and which, in effect, enables the Council to dictate the appointments by simply refusing to confirm any and all nominations. The principle involved in the second attempt of the Legislature to restrict the appointing power and to deprive the Executive of the functions and prerogatives which have received the sanction of many years and of all political parties, I shall at all times vigorously defend without fear or favor. The rule regarding appointments should apply to the Capitol Building Commission, the same as to all other appointments, and when it does not, there must be some special purpose or hidden reason at variance with public policy. "In the entire absence of such nominations and appointments by the Governor," may be intended to mean that should the Governor fail or refuse to make any nominations to the Council, so that consent could not be given to the appointments, then the old Commissioners should continue on in their duties. Who can tell?

Section Fourteen appropriates one hundred and twenty-five thousand dollars for the purpose of completing and enlarging the Capitol building, "together with all such sums as may be received as rents of the said Capitol building." This appropriation then is to complete the building under the present contract, and then to enlarge by the building of wings, but nowhere does the enactment say that this shall be the final appropriation; so

that the word "completing" refers to the present wing, and not what shall follow afterwards, thus leaving the door open for another assessment two years hence.

Section Fifteen makes it the duty of the Territorial Board of Equalization, during each of the years 1888 and 1889, to direct the County Commissioners of the several counties to levy on all taxable property a tax of not less than two mills on the dollar, to raise this amount of \$125,000 in the two years. The entire valuation for 1887 was \$32,089,613.12, an increase over 1886 of \$1,068,829. This increase was brought about by the taxing of the railroad lands embraced in the forty-mile strip running through the entire width of the Territory, and but for this the valuation would have decreased over \$4,000,000. The great shrinkage in cattle will bring down the valuation for 1888 to less than \$30,000,000. The rate of levy on this amount, to raise the \$62,500 for completing and enlarging the building in 1888, will be about 2 10-100 mills on the dollar, and about the same for 1889. In another part of this act the bonds of the Territory are to be issued in the sum of \$90,000 for other buildings. The interest on this amount will be \$5,400 per annum, requiring a levy of about 18-100 of a mill. The levy for the University fund is increased 25-100ths of a mill by this same act, and I have grouped them together for the purpose of clearly showing what the levy will be for Territorial purposes for 1888 and the following year, should this act become a law.

Levy for 1887 upon \$32,089.613.12 for Territorial purposes:

General fund.....	2.50 mills
University fund	.25 "
Bond tax fund.....	.25 "
Insane Asylum fund	.01 "
Total.....	3.01 "

Levy for 1888 upon \$30,000,000 for Territorial purposes:

General fund.....	2.65 mills
University fund as increased by this act	.50 "
Bond tax as increased by this act	.43 "
Insane Asylum fund	.01 "
Special levy for Capitol building.....	2.10 "
Total.....	5.69 "

These figures will be found very conservative. A few years ago the levy was considered very high for all purposes at two mills on the dollar, and business was then prospering and men were making money. Now that business is depressed, with cattle companies breaking up and banks closing their doors, with poverty staring many a good man and woman in the face, and the list of uncollected taxes in each county for 1887 covering

a whole page of the county paper, it is proposed to add to the already oppressive burdens of taxation, and for what purpose? The Capitol building as it stands to-day is large enough for all the requirements of the Territory for at least six years to come. The expenditure of a few thousand dollars to complete it within and fit it for occupancy would be wisely spent, and would receive the hearty endorsement of all the people, but I do not believe that the expenditure of \$125,000 will meet the approbation, at this time, of one-third of the people. I am compelled to present these ugly facts, so that the issue may be fairly presented. Were I to enter into the details of the financial condition of nearly all the counties, and present the rate of taxation now and what must follow, the picture would startle the thinking taxpayer looking to the Tenth Legislative Assembly for prudence and economy in dealing with the property of the citizen for public purposes. The question then involved is, economy without parsimony, casting aside local desires and uniting for the public welfare. If one-tenth of the sum here appropriated for the Capitol building was prudently spent in encouraging and directing immigration to all parts of the Territory, during the years 1888 and 1889, there would be a return from it in wealth and population which would make it easy to enlarge the Capitol building and bring with it joy and good-will instead of tears and curses.

Chapter Two makes provision for locating a penitentiary at Rawlins and directs the Building Commission provided to procure a site by purchase, donation or otherwise. What shall the site be, ten acres or one thousand? Who can tell? The cost of the penitentiary is to be \$100,000, and \$30,000 of the bonds of the Territory are to be issued to purchase a site and commence the erection of the building this year. Under the act of Congress restricting the bonded debt of the Territory to one per centum of the taxable property, there can be issued only about \$90,000 as the last legislative assembly authorized the issuance of \$230,000, and this added to the \$90,000 makes up the sum total of \$320,000, which swallows up the one per centum. This act appropriates \$30,000 to the Penitentiary, \$30,000 to the Insane Asylum, \$25,000 to the University, and \$5,000 to the Poor Asylum building at Lander, thus consuming the \$90,000 available under the act of Congress. Where is the remaining \$70,000 to come from to build the penitentiary? The expenditure of \$30,000 to purchase the site and commence the building of a penitentiary is money thrown away unless the balance of the \$100,000 can be raised. How will it be secured? Just as the \$125,000 is to be raised by this enactment for the Capitol building—by direct taxation. I know men will say, "you can't do it," but so men said when the present Legislature met, and yet you see they can do it, and do it they will, I fear. Is it to be supposed the Capitol will be satisfied, the University satisfied, the Insane Asylum satisfied, and the Poor Asylum satisfied, to see the penitentiary get a large appropriation, and they materialize only for running expenses? No! The selfish spirit of locality, combining to-

gether as now, will impose additional taxes until property, real and personal, will sink under the burden. The time to call a halt is now, this moment, before the evil is beyond remedy, and in this spirit I appeal to the hearts, consciences and good sense of the Tenth Legislative Assembly. In passing from this subject, I will but add that the expense to the Territory, in supporting and maintaining a Penitentiary, if built, will be double what it costs now to keep our prisoners at Joliet. The United States government would gladly, I believe, give up to Wyoming the Penitentiary at Laramie, upon the proper presentation, and thus save the people the expense here proposed. If the experiment must be tried, try it in this way.

Chapter Three authorizes the completion of the University building, and appropriates \$25,000 in bonds for this work. The University is erected, but the upper story is not finished. Bonds can be issued to finish the building which originally cost \$50,000. Will it cost \$25,000 to finish a \$50,000 building? Surely not. Then how is the University, under the law of Congress, to use this \$25,000? The building proper can certainly be finished for \$5,000, and the \$20,000 remaining cannot be touched without a manifest violation of law. If it is intended to erect additional buildings, not required, and which will not be for several years, then where is the justification for this expenditure? The University, in conjunction with the public schools of the Territory, is the hope, pride and glory of our people, and needs not to become the pack-horse for all the legislative combinations necessary to reach the bottom of the Territorial Treasury. The good men and women of Wyoming are willing to pay a one-half-mill tax for the support of the University. They are willing to make up the deficiency now existing. They are willing to finish the building, but they are not willing that the friends of the University, to secure these just appropriations, shall aid and assist in saddling upon them an indebtedness in other directions unnecessary and beyond forbearance.

Chapter Four authorizes the issuance of the bonds of the Territory not exceeding \$30,000 for completing the erection of the Insane Asylum at Evanston. The last legislative assembly appropriated \$30,000 in bonds to erect the Insane Asylum building, and it was erected at a cost of \$31,109.75, which was paid, leaving a balance in the Treasury in favor of the Asylum of \$1,366.55. The premium on the bonds sold was \$2,508, so that the amount for building purposes was \$32,508. The Board of Commissioners in their report to the Governor, which was submitted to the Legislature, shows the erection of a building, two stories, with basement structure, containing on the first and second floors forty-two patients' rooms, two dining rooms, four attendants' rooms, two bath rooms, two water closets and two clothes rooms, with commodious halls throughout the building. The kitchen is in the basement, with an elevator leading therefrom. The partition walls as well as the exterior walls are constructed of stone and brick,

and the ceilings are covered with corrugated iron, thus making the building fire-proof practically. See executive message, pages 32, 33 and 34.

This, then, is the building, and will any sane man say it is not sufficient for the insane of Wyoming for many years to come? Why the appropriation now of \$30,000 more of the bonds of the Territory for building purposes? The report of the Commissioners further sets forth that in order to complete and finish the Asylum and make it ready for occupancy a further appropriation of \$17,500 is required, to be expended as follows:

For boiler and engine house.....	\$ 1,500
For steam heating apparatus.....	5,000
For electric light plant.....	2,000
For water service, sewerage and plumbing.....	4,500
For furnishing	2,500
For kitchen, bakery and laundry.....	1,500
For apothecary shop, medicines and surgical instruments.....	500
Total.....	\$17,500

How many of these articles come under the law of Congress "for erection of penal, charitable and educational institutions," and for which the bonds of the Territory can be issued? The Board of Commissioners say that \$17,500 will be sufficient to equip the building, even to the establishing of an electric light plant costing \$2,000, but the Legislature says the institution must have \$30,000 to be expended in erecting and completing the building. Surely money must be plentiful and taxes light. The same argument applies here as to the University regarding the use of the money derived from the sale of bonds, and I am amazed that the special and immediate friends of these institutions do not see the dangers attending any attempt to apply the money in violation of the act of Congress governing the Territories. There is no danger attending the expenditure of the Capitol building appropriation, for that is in taxes, and there is no danger in laying the foundation of a Penitentiary and Poor Asylum, for they are clearly lawful, but it is otherwise with the University and Insane Asylum.

Chapter Five locates a Poor Asylum building at or near Lander, and authorizes the issuance of \$5,000 in the bonds of the Territory to purchase a site and erect a building, the entire cost of which is to be \$25,000. What shall the site be in this case, ten or one thousand acres? Who can tell? The issuance of the \$5,000 is the last drop in the bucket and completes the \$320,000 allowed by law. Where is the \$20,000 coming from to erect the Poor Asylum building? There can only be one answer, viz: by direct taxation two years hence, and in the meantime the \$5,000 will be spent and accomplish nothing during the two years; yet Fremont county will be charged with having a great public institution.

The passage of this act, then, is enlarging the foundation for biennial at-

tacks upon the Treasury of the Territory, and which all good citizens will condemn when public opinion has had time to ripen and mature. The bill was rushed through both houses under a suspension of the rules, without debate or amendment being allowed; was signed by the respective presiding officers of both houses and placed in the hands of the Governor inside of two hours. The bill was enrolled the night before its passage by four different clerks, not officers of either house, and in a private office away from the Capitol, and is not an exact copy of the enactment as it passed the House and Council. The bill was called up in the dusk of the evening, when the members of both houses were unprepared to present objections, and when many of them had left, supposing nothing was to be done. The whole surroundings of the bill are dark and mysterious. A great public measure appropriating a large sum of public money should not be afraid of the light of public discussion.

I am, very respectfully,

THOMAS MOONLIGHT,

Governor.

EXECUTIVE DEPARTMENT, }
CHEYENNE, WYO., March 3, 1888. }

To the Honorable House of Representatives, Tenth Legislative Assembly:

GENTLEMEN - I have the honor to return herewith House Enrolled Act No. 15 without my approval.

The act provides for the release of dower by married women, and for other purposes.

"Section 2. The acknowledgment or proof of any deed, mortgage, conveyance, release of dower, power of attorney or other writing of, or relating to the sale, conveyance, or other disposition of any land, or real estate, or any interest therein, by a married woman, may be made and certified the same as if she were a feme sole, and shall have the same effect."

Section 9 amends and re-enacts section 2784 of the Revised Statutes so as to read as follows:

"Section 2784. Every owner or occupant of a homestead as established herein, may voluntarily sell, mortgage or otherwise dispose of, or encumber the same, *provided*, that every such sale, mortgage, disposal or encumbrance shall be absolutely void unless the wife of the owner or occupant of such homestead, if he have a wife, and she be sane, shall sign and acknowledge the instrument of writing, conveying, mortgaging, disposing of or encumbering such homestead."

The section of the Revised Statutes here sought to be amended contains this very important clause for the protection of the rights of married women, and which is swept away by this amendment:

“Provided, That every such sale, mortgage, disposal, or encumbrance, shall be absolutely void unless the wife of the owner or occupant of such homestead, if he have any, shall, separate and apart from her said husband, freely and voluntarily sign and acknowledge the instrument of writing, conveying, mortgaging, disposing of, or incumbering such homestead; and the officers taking her acknowledgment shall fully apprise her of her right, and the effect of signing and acknowledging such instrument.” This section here sought to be destroyed protects the wives from undue influence by the husbands, and throws a safeguard around the homestead.

There are very many wives who, if this protecting clause was repealed, would sign unwittingly the very deed, mortgage, or encumbrance which would throw them out of doors, and with their little ones, to become a charge upon the county. I can not believe that the Legislature intends this, and it must have been an oversight. Almost every State, in the west at least, has this very protecting clause here sought to be destroyed, and which has been beneficial to Wyoming.

The newer the country, the stronger the reason for the very measure here sought to be repealed, because the population is shifting and unstable, and makes it so easy for some husbands to get their wives to sign deeds, mortgages, or other conveyances touching their homesteads, then pocket the money received thereby, (for the husbands, such husbands at least, usually get the money) and walk off, leaving the trusting wife and unfortunate children homeless and forsaken. If the wife, when clearly apprised of her rights by the officer taking the acknowledgment, chooses to sign the instrument of conveyance, etc., then it is knowingly done and she has only herself to blame if it proves a mistake, but when upon the request of her husband, on representations made, she signs and acknowledges the instrument without a full knowledge of the effect it will have upon her home, it is placing the wife at an unfair advantage, which I am not willing to become a party to.

But for sections 2 and 9, for they go together, I would gladly have approved the act.

Very respectfully,

THOMAS MOONLIGHT,

Governor.

EXECUTIVE DEPARTMENT, }
CHEYENNE, WYO., March 9, 1888. }

To the Honorable Council, Tenth Legislative Assembly:

GENTLEMEN--I have the honor to return herewith Council Enrolled Act No. 15, relating to the organization of new counties, without my approval.

The close of the session is at hand, and the press of duties has been, and is now, such that it is impossible to present in detail the many reasons for refusing to give approval to the act. That new counties are demanded for the good of the Territory I frankly admit, and have publicly advocated, but the divisions as made in the proposed act are in many instances so manifestly unfair to the great body of the residents and tax-payers of the portions of the old counties cut up and divided, that at their request, and demand in some instances, I am constrained to respect their rights by interposing my objections. It is well known that the northern part of Laramie county, by the enactment attached to the northern portion of Albany county and forming the county of Converse, is as well fitted to maintain a county government as any portion of the Territory, and nine-tenths of the people of that portion, representing nine-tenths of the taxable valuation, prefer to remain in Laramie county unless they can have a county government of their own. The new county of Converse places the inhabitants of Laramie county, attached by this act, at a disadvantage which they consider unfair. There seems to be no objection to the formation of Natrona county as proposed. In the division of Johnson county, had the line extended three miles farther north, to the top of the Massacre Hill divide, I am assured that there would have been no serious objection to the forming of Sheridan county. This is the sentiment as represented to the Executive, which constrains his action now. I attach hereto a statement from the Board of County Commissioners of Laramie county, attested by the County Clerk, presenting strong reasons, and raising a strong point in law relative to the question of county indebtedness, and the effect of the division proposed upon the railroad indebtedness incurred and attaching to the northern portion of Laramie county sought to be embraced in the county of Converse, composed of a portion of Albany county, in no wise responsible for this bonded indebtedness, and this petition has had a strong influence in moulding my course in this respect.

I am, very respectfully,

THOMAS MOONLIGHT,

Governor.

BOARD OF COUNTY COMMISSIONERS, }
CHEYENNE, WYO., March 8, 1888. }

To His Excellency, Thomas Moonlight, Governor of Wyoming:

SIR—We, the undersigned, the Board of County Commissioners of the county of Laramie, do respectfully protest against the division of Laramie county at the present time, and beg to respectfully submit our reasons for so doing:

1. A large majority of the residents of that portion of Laramie county which it is proposed to eliminate are decidedly opposed to the separation contemplated in the pending bill, and we believe this sentiment to be almost universal among those who will be affected by the division.

2. After a careful consideration of the law, as it exists, concerning the formation of new counties and the equitable apportionment of the indebtedness of the old counties, we believe that very grave questions will arise as soon as the new county of Converse organizes, which will necessitate a vast amount of costly litigation. The taxpayers of that portion of Converse county which the bill provides shall be taken from Albany county, will at once question the right to force them to pay taxes for railways, etc., that were, by the express terms of the legislative enactment of 1886, designed for the benefit of but one county. The bonds to aid in the construction of the Cheyenne & Northern Railway were issued by Laramie county. The proportion of this bonded indebtedness and the interest thereon which should be assumed by the new county, it seems to us, will give rise to complicated questions. The liability of the old county for the bonds issued, to the holders of said bonds, would, to our minds, give rise to unnecessary and expensive litigation, especially in the event of portions of new counties refusing to hold themselves bound to pay taxes for benefits enjoyed by another county.

3. We are reliably informed that in the eastern States, when new counties are formed from old ones, provision is made for the place of trial of offenses committed in that portion of the old county which is embraced within the new. This is done to avoid the useless expense which results from questioning the legality of a conviction obtained in a new county. In the present bill not a word is said upon this subject, deemed so essential in the east. The result is, that if an offense be committed, say at Lusk, before the organization of Converse county, the question will at once arise, where is the offender to be tried? At Cheyenne, or at the county seat of the new county? However this may be decided, ground is at once laid to take the case up, and all at the expense of the taxpayer. By a very simple provision in the bill, all this could be avoided.

In addition to the above, there are many matters, too voluminous to mention, that are so urgent in their nature, which together with the incompleteness of the present bill, and the unsatisfactory state of the law governing the formation of new counties, to our minds, render its disapproval a matter of necessity in the interests of the public welfare.

Very respectfully,

Your obedient servants,

H. B. KELLEY, *Chairman,*

THOS. SWAN,

JOHN HUNTON,

County Commissioners,

Laramie County, Wyoming Territory.

[SEAL]

ATTEST:

JOHN K. JEFFREY, *County Clerk and Clerk of Board of County Commissioners.*

EXECUTIVE DEPARTMENT, }
CHEYENNE, WYO., March 9, 1888. }

To the Honorable House of Representatives, Tenth Legislative Assembly:

GENTLEMEN—I have the honor to return herewith House Enrolled Act No. 67, without my approval.

At the closing moments of the Tenth Legislative Assembly, this is perhaps the most wonderful piece of legislation ever presented to any Executive for approval.

The general appropriation bill, providing for the salaries of all the Territorial officers, with contingent funds to enable them to perform the duties required of them by law, as also the allowance for the extra expenses of the Legislature not provided for by the general government, and other matters, has attached to it and forming a part thereof an enactment apportioning the Territory for legislative purposes, and having no connection with the appropriation portion of the enrolled act. There is also attached to the general appropriation bill and made a part of it, an enactment creating new counties by dividing those now in existence and organized for years; and having no relationship to the general appropriation portion of the act.

The portion of the enactment relating to the formation and organization of new counties passed both Houses as Council Enrolled Act No. 15, and was submitted to the Executive for action. This Enrolled Act was returned to the Council where it originated, without approval, at noon today, accompanied by an executive message giving the reasons therefor. It was passed over the veto by the Council, sent to the House, and has never been acted upon by that body, as required by the Organic Act of

Wyoming and the laws of Congress governing the Territories. See Revised Statutes of Wyoming, pages 31, 35 and 36. This same vetoed act now appears as a part of the general appropriation bill, and is submitted to the Governor again for his approval.

There is but one course left the Executive. He can not in honor or in justice give his approval to an enactment embracing the whole measure, and dealing with the whole subject, which had been by him denied approval but a few hours before. The same conscientious conviction of duty requires and commands the same action now. Were it possible to approve the appropriation part of the bill, I would gladly do so, but since this is impossible, without approving that portion of the bill already and heretofore vetoed, the responsibility for the failure of the appropriations, if they shall fail, will not attach to the Executive.

Very respectfully,

THOMAS MOONLIGHT,

Governor.